

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Jerman Barton,

C/A No.: 1:13-00415-JFA

Plaintiff,

v.

ORDER

Sergeant James Johnson,

Defendant.

Plaintiff Jerman Barton (“Plaintiff”), who is incarcerated at Lieber Correctional Institution, brings the above-captioned case pursuant to 42 U.S.C. § 1983, alleging Sergeant James Johnson (“Defendant”) used excessive force against him, in violation of his eighth amendment rights. This matter is before the court on Defendant’s motion for summary judgment under FED. R. CIV. P. 56.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein she recommends that the court deny Defendant’s motion for summary judgment. The Report and Recommendation sets forth the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

Defendant was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on November 21, 2013. However, Defendant did not file any objections. Plaintiff filed what was styled as “Plaintiff’s Response in Opposition to the

¹ The Magistrate Judge’s review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

Magistrate Judge Shiva V. Hodges Report and Recommendation.” That filing, however, was intended to support the Report and Recommendation’s denial of Defendant’s motion for summary judgment, the most favorable outcome available to Plaintiff. The court, therefore, finds that no objection to the Report and Recommendation has been made. In the absence of specific objections to the Report of the Magistrate Judge, this court is not required to give any explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

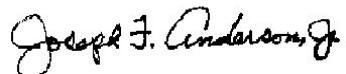
After carefully reviewing the applicable laws, the record in this case, and the Report and Recommendation, this court finds that the Magistrate Judge’s recommendation fairly and accurately summarizes the facts and applies the correct principles of law. The Report is incorporated herein by reference in its entirety.

Accordingly, the Defendants’ motion for summary judgment is denied. This court is amenable to granting plaintiff’s motion for appointment of counsel to represent him at trial, but before doing so, the court needs to determine where the trial will be conducted. The venue of this case is in the Charleston Division, where Lieber Correctional Institution is located and where the plaintiff and defendant reside. If both parties were to consent to have the trial conducted in Columbia, using a Columbia jury box, this court could try the case during the March/April 2014 term of court, appointing a Columbia attorney to represent the plaintiff. If the case is to be tried in Charleston, the court would appoint a Charleston attorney and would have to schedule the trial at a date convenient to the court personnel in Charleston.

Because of these concerns, the court needs to know whether both parties will consent to a trial in Columbia. If either party objects, the trial will be conducted in Charleston.

The parties are requested to notify this court within 14 days from the date of this order whether they will consent to the case being tried in Columbia. If either party objects, the trial will be held in Charleston, and the court will not look unfavorably upon the party who objected to the transfer to Columbia.

IT IS SO ORDERED.



December 19, 2013
Columbia, South Carolina

Joseph F. Anderson, Jr.
United States District Judge